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DANIEL S. POLLEY, P.A. 1215 EAST BROWARD BOULEVARD FORT LAUDERDALE, FL 33301			EXAMINER BOYCE, ANDRE D	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/883,590  
Filing Date: June 18, 2001  
Appellant(s): FRENGUT, RENEE

\_\_\_\_\_  
Daniel S. Polley  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 9, 2007 appealing from the Office action mailed March 7, 2007.

**MAILED**  
JAN 25 2008  
**GROUP 3607**

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1, 5, 7, 10, 12-18, 21, 22, 24-26, 32, 33, 35, 36, 40-42, 44-52 and 54-58.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

USPN 6,237,025	Ludwig et al	May 2001
e-Focusgroups.com		March 5, 2000
US 2002/0002482	Thomas	January 2002
USPN 6,256,663	Davis	July 2001

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, 12, 13, 16, 18, 21, 22, 24-26, 32, 33, 35, 36, 40-42, 44-52 and 54-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig et al (USPN 6,237,025), in view of e-Focusgroups.com (March 5, 2000 version of the website).

As per claim 1, Ludwig et al discloses a method for conducting a live study (e.g., multi-media collaboration teleconferencing including real time audio and video, column 4, lines 58-60) with one or more participants (i.e., real-time audio/video/data communication via WAN, column 10, lines 18-21), said method, comprising, the steps of: (a) selecting one or more individuals for a specific online live study (i.e., multi-party conference wherein participants invited by selection, column 24, lines 58-67); (d) providing each of said one or more individuals and said moderator with an audio/video capture mechanism (e.g., collaborative multimedia workstation (CMW) readily imposed onto an existing workstation, column 5, lines 14-19) that is connectable to a machine that permits live audiovisual two-way images and communication across a network (i.e., CMW 12 provides high-quality live video image and audio of the CMW operator, column 6, lines 29-36) (f) conducting the live study at the website by capturing live video images of the individuals and moderator and live audio communications between and among the individuals (i.e., real-time audio/video images of participants in conference, column 6, lines 40-44) and the moderator based on questions asked or stimuli shown to the individuals over the network (i.e., data conferencing, including snapshot and application sharing, wherein any participant can point at or annotate the shared data, column 9, lines 18-31).

Ludwig et al does not explicitly disclose conducting a specific online live study being held at a website on the Internet at a certain time, (b) providing each individual with sign-in information for the specific online study, (c) selecting a moderator for conducting the specific online live study, wherein the one or more individuals are selected based on their willingness to participate in the live online study and not based on any business relationship or business connection of the one or more participants with the moderator, said moderator and said one or more individuals independent from each other and not from a same organization or business entity and (e) permitting said one or more individuals to participate in the specific online live study by allowing said one or more individuals to access the specific online live study by using their sign-in information at the website.

e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (§§ 1-2), wherein the respondents are recruited from around the globe (§ 13). In addition, e-Focusgroups.com discloses providing a moderator and developing a moderator's interview guide (§15). Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include conducting a specific online live study being held at a website on the Internet at a certain time, providing each individual with sign-in information for the specific online study, and selecting a

moderator for conducting the specific online live study in Ludwig et al, as seen in e-Focusgroups.com, thus expanding the WAN communication disclosed in Ludwig et al to include the Internet, wherein the participants of Ludwig would comprise an online focus group, while increasing the participants that are able to collaborate in Ludwig et al, making the Ludwig et al system more flexible and robust.

As per claim 7, Ludwig et al disclose displaying a stimulus to the participants across the distributed network and, receiving one or more participant responses to the stimulus across the distributed network (e.g., any participant can point at or annotate the shared data, column 9, lines 28-31).

As per claim 12, Ludwig et al discloses method for conducting a live study from a host machine over a network (e.g., multi-media collaboration teleconferencing including real time audio and video, column 4, lines 58-60), comprising, the steps of: selecting a set of candidates to participate in a live study (i.e., multi-party conference wherein participants invited by selection, column 24, lines 58-67), inviting the set of candidates to access the live study at a predetermined time interval (i.e., multi-party conference wherein participants invited by selection at the time of the conference, column 24, lines 58-67), wherein the candidates communicate with the host and/or each other using a respective user machine interface having live audio/video two-way image and communication mechanism connected thereto (e.g., collaborative multimedia workstation (CMW) readily imposed onto an existing workstation, column 5, lines 14-19), wherein each user machine is located geographically remote from the host (i.e., real-time audio/video/data communication via WAN, column 10, lines

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18-21), initiating live two-way audio communication and video images between and among the host and/or the geographically remote user machines with at least a set of participants comprising a first portion of the set of candidates, during the predetermined time interval in substantially real time (i.e., CMW 12 provides high-quality live video image and audio of the CMW operator, column 6, lines 29-36); exhibiting over the network a stimulus to the participants (i.e., data conferencing, including snapshot and application sharing, wherein any participant can point at or annotate the shared data, column 9, lines 18-31); and accumulating live participant images and responses to the stimulus over the network at the host (e.g., audio/video and data of the teleconference can be recorded at a CMW, or within MLAN 10, complete with all the data interactions, column 9, lines 36-39).

Ludwig et al does not explicitly disclose an online study to be conducted over the Internet, wherein the set of candidates are selected based on their willingness to participate in the live online study and not based on any business relationship or business connection of the set of candidates with the host, said set of candidates and said host are independent from each other and not from a same organization or business entity, and wherein the candidates access the live online study through sign-in information provided to candidates prior to a starting time for the live study. e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (¶¶ 1-2), wherein the respondents are recruited from around the



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globe (¶ 13). Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an online study to be conducted over the Internet, and wherein the candidates access the live online study through sign-in information provided to candidates prior to a starting time for the live study in Ludwig et al, as seen in e-Focusgroups.com, thus expanding the WAN communication disclosed in Ludwig et al to include the Internet, wherein the participants of Ludwig would comprise an online focus group, thus making the Ludwig system more flexible and robust.

As per claim 13, Ludwig et al discloses verifying a presence of each participant throughout the live study (e.g., live video image of participants, column 6, lines 58-60).

As per claim 16, Ludwig et al discloses the additional step of selecting groups of participants for a predetermined stimulus, wherein the predetermined stimulus is shown to the participant group (i.e., data conferencing, including snapshot and application sharing, wherein any participant can point at or annotate the shared data, column 9, lines 18-31).

As per claim 18, Ludwig et al discloses the additional step of tabulating results of the live study (e.g., audio/video and data of the teleconference can be recorded at a CMW, or within MLAN 10, complete with all the data interactions, column 9, lines 36-39).

Claim 21 is rejected based upon the rejection to claim 12, since it is the system claim corresponding to the method claim.

As per claim 22, Ludwig et al discloses a sponsoring client is permitted to access the user responses and audio/video two-way communications between and among one or more users and the moderator (i.e., the expert is engaged in a videoconference with a field representative 201 and client 202, wherein the field representative shares a graphical image 210, column 36, lines 35-42). Ludwig et al does not explicitly disclose a sponsoring client device having distributed network access wherein a sponsoring client is permitted to access the live online study while the live online study is ongoing unobtrusively to each user and can observe the submitted moderator stimuli, wherein said sponsoring client and said users independent from each other and not from a same organization or business entity. e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (¶¶ 1-2), wherein the respondents are recruited from around the globe (¶ 13). Moreover, clients can communicate with one another privately in the client room, as well as observing the interaction taking place in the discussion room (¶ 26). In addition clients can communicate with the moderator without the respondents knowing (¶ 26). Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the

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time the invention was made to include a sponsoring client device having distributed network access wherein a sponsoring client is permitted to access the live online study while the live online study is ongoing unobtrusively to each user in Ludwig et al, as seen in e-Focusgroups.com, thus allowing the participants to freely and openly interact as disclosed in e-Focusgroups.com, thus making the Ludwig system more flexible and robust.

As per claim 24, Ludwig et al disclose a user working from the user device observes a live audiovisual image of the user (i.e., audio/video received by a CMW 12 includes video images of participants, column 6, lines 40-44).

As per claims 25-26, Ludwig et al discloses a user working from the user device conducts live two-way audiovisual communications with one or more users (e.g., multi-media collaboration teleconferencing including real time audio and video, column 4, lines 58-60), and observes a set of submitted participant responses (i.e., data conferencing, including snapshot and application sharing, wherein any participant can point at or annotate the shared data, column 9, lines 18-31).

As per claim 32, Ludwig et al discloses said participants are selected from a group of candidates (i.e., multi-party conference wherein participants invited by selection, column 24, lines 58-67).

As per claim 33, Ludwig et al does not disclose permitting a client to access the website through sign-in information provided to the client to permit the client to view over the Internet the live online study while the live online study is ongoing; wherein the client is connected to the subject matter of the live online study, wherein the

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client and said one or more individuals independent from each other and not from a same organization or business entity. e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (§§ 1-2), wherein the respondents are recruited from around the globe (§ 13), and including customer input into processes including new product development and evaluation (§ 10). Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include permitting a client to access the website through sign-in information provided to the client to permit the client to view over the Internet the live online study while the live online study is ongoing in Ludwig et al, as seen in e-Focusgroups.com, thus expanding the WAN communication disclosed in Ludwig et al to include the Internet, wherein the participants of Ludwig would comprise an online focus group, thus making the Ludwig system more flexible and robust.

As per claim 35, Ludwig et al discloses recording an audiovisual record of the live study and delivering the audiovisual record to the client (e.g., audio/video and data of the teleconference can be recorded at a CMW, or within MLAN 10, complete with all the data interactions, column 9, lines 36-39).

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As per claim 36, Ludwig et al discloses a number of candidates selected being fewer than all candidates available for selection (i.e., participants selected by collaboration initiator from group of all CMW users in initiator's rolodex, column 24, lines 45-52).

As per claim 40, Ludwig et al discloses a medium for storing accumulated recordings of the live audio and video communications between and among the moderator and other users, a processor for evaluating user responses, and an engine outputting results based on the user responses (e.g., audio/video and data of the teleconference can be recorded at a CMW, or within MLAN 10, complete with all the data interactions, column 9, lines 36-39).

Claims 41, 42 and 52 are rejected based upon the same rationale as the rejection of claim 1, since they contains the same limitations therein.

As per claims 44-46, 54 and 55 Ludwig et al does not explicitly disclose wherein said sign-in information is provided to each individual and the moderator in advance of a scheduled date and time for the live online study and wherein the live study is secured and held online at a website and the sign-in information is a user id and password for each individual and permits the individual with access to the secured live study. e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (¶¶ 1-2), wherein inviting to an online focus group must include a scheduled time and place for the client, moderator, and respondents. Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals

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at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include said sign-in information is provided to each individual in advance of a scheduled date and time for the live online study and wherein the live study is secured and held online at a website and the sign-in information is a user id and password for each individual and permits the individual with access to the secured live study in Ludwig et al, as seen in e-Focusgroups.com, thus expanding the WAN communication disclosed in Ludwig et al to include a secured website, wherein the participants of Ludwig et al would comprise participants who meet the screening criteria of the client, as disclosed in e-Focusgroups.com (§ 2), thus making the Ludwig system more flexible and robust.

As per claim 47, Ludwig et al does not explicitly disclose permitting a client to access and observe an ongoing live online study over the Internet unobtrusively to the one or more individuals, wherein the client and said one or more individuals independent from each other and not from a same organization or business entity. e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (§§ 1-2), wherein the respondents are recruited from around the globe (§ 13). Moreover, clients can communicate with one another privately in the client room, as well as observing the interaction taking place in the discussion room (§ 26). In addition clients can communicate with the moderator without the

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respondents knowing (§ 26). Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a sponsoring client device having distributed network access wherein a sponsoring client is permitted to access the live online study while the live online study is ongoing unobtrusively to each user in Ludwig et al, as seen in e-Focusgroups.com, thus allowing the participants to freely and openly interact as disclosed in e-Focusgroups.com, thus making the Ludwig system more flexible and robust.

As per claims 48, 50, 56 and 58, Ludwig et al does not explicitly disclose preventing the client from communicating with the one or more individuals through the live online study while the live online study is being conducted and permitting the client to communicate with the moderator unobtrusively to the one or more individuals during the ongoing live online study. e-Focusgroups.com discloses clients communicating with one another privately in a client room and clients communicating with the moderator, but not the respondents (§ 26). Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include preventing the client from communicating with the one or more individuals through the live online study while the live online study is being conducted in Ludwig et al, as seen in e-Focusgroups.com, thus keeping the client communications private while

allowing the participants to carry on open discussions, as disclosed by e-Focusgroups.com, thus making the Ludwig system more flexible and robust.

As per claims 49 and 57, Ludwig et al does not disclose wherein said client is provided with sign-in information in advance of a scheduled date and time for the live online study in order to access and observe the ongoing live online study over the Internet. e-Focusgroups.com discloses the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (§§ 1-2), wherein inviting to an online focus group must include a scheduled time and place for the client, moderator, and respondents. Both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an online study to be conducted over the Internet, and wherein the candidates access the live online study through sign-in information provided to candidates prior to a starting time for the live study in Ludwig et al, as seen in e-Focusgroups.com, thus expanding the WAN communication disclosed in Ludwig et al to include the Internet, wherein the participants of Ludwig would comprise an online focus group, thus making the Ludwig system more flexible and robust.

As per claim 51, Ludwig et al does not explicitly disclose wherein said client is connected to the subject matter of the live online study. e-Focusgroups.com discloses including customer input into processes including new product development and evaluation (§ 10). Both Ludwig et al and e-Focusgroups.com are



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concerned with collaboration of individuals at geographically dispersed locations, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include said client is connected to the subject matter of the live online study in Ludwig et al, as seen in e-Focusgroups.com, thus expanding the WAN communication disclosed in Ludwig et al to include the Internet, wherein the participants of Ludwig would comprise an online focus group for a particular customer/client, thus making the Ludwig system more flexible and robust.

Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig et al (USPN 6,237,025), in view of e-Focusgroups.com (March 5, 2000 version of the website), in further view of Thomas (US 2002/0002482).

As per claims 5 and 14, neither Ludwig et al nor e-Focusgroups.com disclose paying each participant a first sum for participating in the live study; and, paying a non-selected remainder portion of the candidates a second sum which is less in monetary amount than the first sum. Thomas discloses offering incentives to registered participants, including money (§ 0029), wherein non-registered participants would not receive any incentive (i.e., money), which is less than what registered participants would receive. Ludwig et al, e-Focusgroups.com, and Thomas are concerned with effective participant communication via electronic means, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include incentives for the respondents in Ludwig

et al, thereby making participation more attractive to the plurality of potential respondents.

Claims 10, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludwig et al (USPN 6,237,025), in view of e-Focusgroups.com (March 5, 2000 version of the website), in further view of Davis (USPN 6,256,663).

As per claims 10 and 15, neither Ludwig et al nor e-Focusgroups.com explicitly disclose the additional step of officiating a follow-up interview with a participant, wherein the moderator displays additional stimulus and receives additional participant response in response to the additional stimulus. Davis discloses that the moderator provides additional questions and/or information provided to the respondent (column 6, lines 63-67). Ludwig et al, e-Focusgroups.com, and Davis are concerned with effective participant communication via electronic means, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a moderator displays additional stimuli in Ludwig et al, similar to the expert disclosed by Ludwig et al (column 35, lines 23-34), wherein the system allows for remote access to expertise, thus making the system more robust.

As per claim 17, neither Ludwig et al nor e-Focusgroups.com explicitly disclose the additional step of dynamically selecting a particular stimulus for transmission over the distributed network to the participants in response to prior participant responses. Davis discloses that a client may modify or alter the direction of the

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focus group or suggest additional stimuli (column 6, lines 61-65). Ludwig et al, e-Focusgroups.com and Davis are concerned with effective participant communication via electronic means, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a moderator in Ludwig et al, similar to the expert disclosed by Ludwig et al (column 35, lines 23-34), wherein the system allows for remote access to expertise, thus making the system more robust.

#### **(10) Response to Argument**

In the Appeal Brief, Appellant argues that 1) there is no motivation, teaching or suggestion to go outside the company setting and begin using Ludwig's system for other purposes, or to give non-company employees password information permitting them to sign into Ludwig's system, 2) e-Focusgroups merely provides chat-based focus groups and surveys on the web, and that the conventional focus group is not being recreated online by e-Focusgroups, 3) e-Focusgroups teaches away from conducting an audio-visual live study on the Internet, 4) e-Focusgroups does not provide the technology for modifying Ludwig such that the sponsoring client can watch the live ongoing audio-visual study without the participants knowing that they are being watched by the client, and 5) that the Examiner failed to give any weight to the significant secondary considerations raised by Appellant in the Rule 132 Declaration filed November 22, 2005.

With respect to Argument 1, the Examiner respectfully disagrees with Appellant's interpretation of Ludwig and Appellant's bald conclusions throughout the Appeal Brief concerning motivation to combine with the Ludwig system. First, Ludwig discloses remote access to expertise, wherein various participants teleconferencing with a remote expert in order to ask and answer questions with respect to a specific subject, which may indeed be deemed a focus group (column 35, lines 23-27), thus indeed disclosing going outside the company setting. Moreover, as discussed in the *KSR International Co. v. Teleflex Inc. et al.*, 550 U.S. \_\_\_\_ (2007), "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness'). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." Here, both Ludwig et al and e-Focusgroups.com are concerned with collaboration of individuals at geographically dispersed locations.

With respect to Argument 2, the Examiner respectfully disagrees. First, e-Focusgroups.com discloses a web-based online focus group, providing a secure DSL line and a chat-mediated, web based virtual room, wherein the site is secured so that only those respondents who meet the screening criteria and who are invited can participate (¶¶ 1-2), wherein the respondents are recruited from around the globe (¶ 13). In addition, e-Focusgroups.com discloses providing a moderator and developing a moderator's interview guide (¶15). Moreover, e-Focusgroups.com discloses online video focus groups (¶ 30). As such, Ludwig in view of e-Focusgroups.com indeed discloses the conventional focus group recreated online.

With respect to Argument 3, the Examiner respectfully disagrees. e-Focusgroups.com discloses clients communicating with one another privately in the client room, as well as observing the interaction taking place in the discussion room (¶ 26). In addition clients can communicate with the moderator without the respondents knowing (¶ 26), and online video focus groups (¶ 30). As such, contrary to Appellant's assertion, Ludwig in view of e-Focusgroups.com does not teach away from conducting an audio-visual live study on the Internet.

With respect to Argument 4, the Examiner respectfully disagrees. e-Focusgroups.com discloses clients communicating with one another privately in a client room and clients communicating with the moderator, but not the respondents (¶ 26). As such, Ludwig in view of e-Focusgroups.com indeed discloses the sponsoring client can watch the live ongoing audio-visual study without the participants knowing that they are being watched by the client.

With respect to Argument 5, the Examiner respectfully disagrees. The Examiner indeed gave weight to Appellant's Rule 132 Declaration, however the Declaration is insufficient to rebut the Examiner's prima facie case of obviousness. Specifically, Appellant alleges copying, "[h]owever, more than the mere fact of copying is necessary to make that action significant because copying may be attributable to other factors such as a lack of concern for patent property or contempt for the patentees ability to enforce the patent. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985)." Moreover, "[a]lleged copying is not persuasive of nonobviousness when the copy is not identical to the claimed product, and the other manufacturer had not expended great effort to develop its own solution. *Pentec, Inc. v. Graphic Controls Corp.*, 776 F.2d 309, 227 USPQ 766 (Fed. Cir. 1985). See also *Vandenberg v. Dairy Equipment Co.*, 740 F.2d 1560, 1568, 224 USPQ 195, 199 (Fed. Cir. 1984) (evidence of copying not found persuasive of nonobviousness) and *Panduit Corp. v. Dennison Manufacturing Co.*, 774 F.2d 1082, 1098-99, 227 USPQ 337, 348, 349 (Fed. Cir. 1985), vacated on other grounds, 475 U.S. 809, 229 USPQ 478 (1986), on remand, 810 F.2d 1561, 1 USPQ2d 1593 (Fed. Cir. 1987) (evidence of copying found persuasive of nonobviousness where admitted infringer failed to satisfactorily produce a solution after 10 years of effort and expense)." See MPEP §716.06.

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**11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Andre Boyce  
January 21, 2008

Conferees:



Vincent Millin, Conferee Specialist



Romain Jeanty, Primary Patent Examiner

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